

1 SENATE BILL NO. 381

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the Senate Committee on Commerce and Labor  
4 on February 5, 2024)

5 (Patron Prior to Substitute--Senator Ebbin)

6 A BILL to amend and reenact §§ 60.2-528.1 and 60.2-619 of the Code of Virginia, relating to  
7 unemployment compensation; employer failure to respond to requests for information;  
8 determinations and decisions by deputy.

9 **Be it enacted by the General Assembly of Virginia:**

10 **1. That §§ 60.2-528.1 and 60.2-619 of the Code of Virginia are amended and reenacted as follows:**

11 **§ 60.2-528.1. Charging of benefits relating to certain overpayments; penalty for pattern of**  
12 **failure to respond to requests for information.**

13 A. As used in this section, unless the context requires a different meaning:

14 "Employer," with regard to the timeliness and adequacy of responses, includes an agent of the  
15 employer used by the employer to respond to the Commission on the employer's behalf; however, an  
16 employer's agent's failure to respond timely or adequately to requests for information with regard to claims  
17 involving the agent's other clients shall not be used in determining whether the employer has established  
18 a pattern of failing to respond timely or adequately to written requests for information.

19 "Erroneous payment" means a payment of benefits under this title made prior to a determination  
20 by the Commission that the claimant is not eligible or qualified for the benefits paid.

21 "Information relating to a claim" means information material to a determination or decision by the  
22 Commission relating to the payment of benefits under this title, including separation information and  
23 information required by the Commission for the establishment of a claim for compensation and  
24 information about wages, days, and hours worked.

25 "Review period" means the 48 consecutive calendar month period ending on the June 30 that  
26 precedes the Commission's next annual calculation of the employer's benefit ratio pursuant to subdivision  
27 A 1 a of § 60.2-530.

28 "Written request" includes a request sent electronically.

29 B. An employer's account shall not be relieved of charges relating to an erroneous payment if the  
30 Commission determines that:~~1. The erroneous payment was made because~~ the employer has failed to  
31 respond timely or adequately to a written request by the Commission for information relating to the claim;  
32 and

33 ~~2. The~~ the employer has established a pattern of failing to respond timely or adequately to written  
34 requests by the Commission for information relating to claims.

35 C. For purposes of this section, an employer's response to a written request by the Commission for  
36 information relating to a claim shall be deemed not to be:

37 1. "Adequate" if it fails to provide sufficient material facts to enable the Commission to make a  
38 correct determination regarding a claim for benefits; however, (i) a response shall not be deemed  
39 inadequate if the Commission failed to request the necessary information or if information is provided in  
40 a format other than as requested, provided that the information is capable of being read by the recipient,  
41 and (ii) there shall be a rebuttable presumption that an employer that participates in a fact-finding interview  
42 or responds fully to the questions set out on the written request for information has provided an adequate  
43 response; or

44 2. "Timely" if it is not made within 10 calendar days after the delivery or mailing of the  
45 Commission's request for information.

46 D. An employer shall be deemed to have established a pattern of failing to respond timely or  
47 adequately to written requests for information relating to claims if the Commission determines that the  
48 employer has failed to respond timely or adequately to a written request for information relating to a claim  
49 ~~on four~~ three or more occasions within the applicable review period. The Commission shall not find that  
50 an employer has established a pattern of failing to respond timely or adequately to written requests for  
51 information relating to claims unless the Commission has provided the employer with the notices required

52 pursuant to subsection E. The Commission shall include in any written request for information from an  
53 employer notice of (i) the deadline to provide a timely response, (ii) the requirement to provide an adequate  
54 response, and (iii) the consequences of such employer's failure to provide such timely and adequate  
55 response.

56 E. The Commission shall provide the employer with a written notice following ~~the employer's first,~~  
57 ~~second, and third determinations that~~ each instance in which the employer failed ~~fails~~ to respond timely  
58 or adequately to a written request for information relating to a claim ~~within the applicable review period.~~  
59 Each such notice shall be electronically delivered, including delivery through the Employer Self-Service  
60 Tax System website maintained by the Commission, or mailed to the ~~employer's last known address of~~  
61 ~~agency record~~ employer and shall advise the employer of the ~~potential~~ implications of the employer's  
62 failure to respond timely or adequately to written requests for such information. The Commission shall (i)  
63 provide employers who are not registered for a State Information Data Exchange System E-Response or  
64 System Integration Account in Virginia with the option to elect delivery of such notices to a designated  
65 mailing address and (ii) ensure such notices are delivered to a physical or electronic mailing address  
66 customarily used by the employer's designated attorney or authorized representative for unemployment  
67 insurance claim matters.

68 F. 1. Upon the Commission's ~~third~~ second determination within the applicable review period that  
69 an employer failed to respond timely or adequately to a written request for information relating to a claim,  
70 the Commission shall assess upon the employer a civil penalty of ~~\$75~~ \$100. A copy of the notice of  
71 assessment of a civil penalty shall be delivered or mailed to the employer with the notice of the employer's  
72 ~~third~~ second such failure as required pursuant to subsection E. Civil penalties collected pursuant to this  
73 subsection shall be paid into the Special Unemployment Compensation Administration Fund established  
74 pursuant to § 60.2-314. The Commission may compromise, settle, and adjust any such penalty as  
75 authorized by § 60.2-521.

76 2. Upon the Commission's third determination, and for each subsequent determination, within the  
77 applicable review period that an employer failed to respond timely or adequately to a written request for  
78 information relating to a claim, the employer shall be considered to have waived all rights in connection

79 with the claim, including participation and appeal rights otherwise available pursuant to Article 5 (§ 60.2-  
80 619 et seq.) of Chapter 6, unless the employer demonstrates to the Commission that good cause exists for  
81 such failure.

82 G. An employer shall not be found to have failed to respond timely or adequately to a written  
83 request by the Commission for information relating to a claim if the Commission finds good cause for  
84 such failure. The Commission may not find good cause for an employer's failure to respond timely or  
85 adequately to such a written request unless the failure is due to compelling and necessitous circumstances  
86 beyond the employer's control. The Commission shall find good cause for an employer's failure to respond  
87 timely or adequately to such a written request if the employer demonstrates that the Commission (i) did  
88 not deliver such request to the physical or electronic mailing address specified in writing by the employer  
89 for unemployment insurance claim matters or (ii) did not deliver such request to the employer's designated  
90 attorney or authorized representative for unemployment insurance claim matters.

91 H. If the Commission has determined that an employer has established a pattern of failing to  
92 respond timely or adequately to written requests for information relating to claims, such determination  
93 shall remain in effect until the end of the applicable review period. Any benefit charges for an erroneous  
94 payment that the Commission has determined are not to be relieved from the employer's account pursuant  
95 to subsection B shall remain chargeable to the employer's account through the period ending on the fourth  
96 June 30 following the Commission's determination.

97 ~~I. The issue of whether an employer's account shall be relieved of charges relating to an erroneous~~  
98 ~~payment, including whether an erroneous payment was made because the employer failed to respond~~  
99 ~~timely or adequately to a written request by the Commission for information relating to the claim, shall~~  
100 ~~be decided in every Commission proceeding arising from an employer's appeal of an award of benefits.~~  
101 ~~Any such decision shall be subject to appeal pursuant to § 60.2-620. Final decisions shall be used in~~  
102 ~~determining whether the employer has established a pattern of failing to respond timely or adequately to~~  
103 ~~written requests for information relating to claims, whether the employer is subject to a civil penalty~~  
104 ~~pursuant to subsection F, and whether the Commission has given the notices required pursuant to~~  
105 ~~subsection E.~~

106           ~~J.~~ The costs of benefits charged to any governmental entity, Indian tribe, or nonprofit entity that is  
107 a reimbursable employing unit under this title shall not include any credits of benefit overpayments  
108 actually collected by the Commission if the Commission finds that ~~the overpayment was made because~~  
109 the entity or its agent was at fault for failing to respond timely or adequately to a written request for  
110 information relating to a claim and the entity or agent has established a pattern of failing to respond timely  
111 or adequately to such requests.

112           ~~K.~~J. If the erroneous payment results from a combined-wage claim, the determination of  
113 noncharging for the combined-wage claim shall be made by the paying state. If the response from the  
114 employer does not meet the criteria established by the paying state for an adequate or timely response, the  
115 paying state shall promptly notify the transferring state of its determination, and the employer shall be  
116 appropriately charged.

117           ~~L.~~K. This section applies to erroneous payments established on or after ~~July 7, 2013~~ January 1,  
118 2025.

119           **§ 60.2-619. Determinations and decisions by deputy; appeals therefrom.**

120           A. 1. A representative designated by the Commission as a deputy, shall promptly examine the  
121 claim. The deputy shall only examine or consider in the claim review process information or evidence  
122 from an employer or third party if the deputy (i) has provided the claimant with a reasonable opportunity  
123 to review and respond to all potentially disqualifying issues or conflicting or otherwise adverse material  
124 facts within such information or evidence, (ii) has documented all material responsive information  
125 received from the claimant pursuant to clause (i), and (iii) considers material responsive information in  
126 the deputy's evaluation of the claim. On the basis of the facts found by him, the deputy shall either:

127           a. Determine whether or not such claim is valid, and if valid, the week with respect to which  
128 benefits shall commence, the weekly benefit amount payable and the maximum duration thereof; or

129           b. Refer such claim or any question involved therein to any appeal tribunal or to the Commission,  
130 which tribunal or Commission shall make its determination in accordance with the procedure described  
131 in § 60.2-620.

132           2. When the payment or denial of benefits will be determined by the provisions of subdivision A  
133 2 of § 60.2-612, the deputy shall promptly transmit his full finding of fact with respect to that subdivision  
134 to any appeal tribunal, which shall make its determination in accordance with the procedure described in  
135 § 60.2-620.

136           B. Upon the filing of an initial claim for benefits, the Commission shall cause an informatory  
137 notice of such filing to be mailed to the most recent 30-day or 240-hour employing unit of the claimant  
138 and all subsequent employing units, and any reimbursable employing units which may be liable for  
139 reimbursement to the Commission for any benefits paid. However, the failure to furnish such notice shall  
140 not have any effect upon the claim for benefits.

141           C. Notice of determination upon a claim, the reasoning behind the decision, and a statement of  
142 case-specific facts material to the determination shall be promptly given to the claimant by delivering or  
143 by mailing such notice to the claimant's last known address. In addition, notice of any determination which  
144 involves the application of the provisions of § 60.2-618, together with the reasons therefor, shall be  
145 promptly given in the same manner to the most recent 30-day or 240-hour employing unit by whom the  
146 claimant was last employed and any subsequent employing unit which is a party. The Commission may  
147 dispense with the giving of notice of any determination to any employing unit, and such employing unit  
148 shall not be entitled to such notice if it has failed to respond timely or adequately to a written request of  
149 the Commission for information, as required by § 60.2-528.1, from which the deputy may have determined  
150 that the claimant may be ineligible or disqualified under any provision of this title. The deputy shall  
151 promptly notify the claimant of any decision made by ~~him~~ the deputy, the reasoning behind the decision,  
152 and a statement of case-specific facts material to the determination at any time which in any manner denies  
153 benefits to the claimant for one or more weeks. As used in this subsection, the reasoning behind the  
154 decision means an explanation in plain language of (i) the law or regulation upon which the determination  
155 is based; (ii) the application of the law to the material information or evidence obtained from the claimant,  
156 employer, or third party; and (iii) the legal conclusion drawn from the application of the law to such  
157 information or evidence.

158 D. Such determination or decision shall be final unless the claimant or any such employing unit  
159 files an appeal from such determination or decision (i) within 30 calendar days after the delivery of such  
160 notification, (ii) within 30 calendar days after such notification was mailed to his last known address, or  
161 (iii) within 30 days after such notification was mailed to the last known address of an interstate claimant.  
162 For good cause shown, the 30-day period may be extended. A claim that the Commission has determined  
163 to be invalid because of monetary ineligibility shall first be subject to review only upon a request for  
164 redetermination pursuant to § 60.2-629. The Commission shall issue a new monetary determination as a  
165 result of such review, and such monetary determination shall become final unless appealed by the claimant  
166 within 30 days of the date of mailing. The Commission shall clearly set out the process for requesting a  
167 redetermination and the process for filing an appeal on each monetary determination issued. Monetary  
168 ineligibility does not include an appeal on the effective date of the claim, unless the claimant has requested  
169 and received a redetermination of the monetary determination pursuant to § 60.2-629.

170 E. Benefits shall be paid promptly in accordance with a determination or redetermination under  
171 this chapter, or decision of an appeal tribunal, the Commission, the Board of Review or a reviewing court  
172 under §§ 60.2-625 and 60.2-631 upon the issuance of such determination, redetermination or decision,  
173 regardless of the pendency of the period to file an appeal or petition for judicial review that is provided in  
174 this chapter, or the pendency of any such appeal or review. Such benefits shall be paid unless or until such  
175 determination, redetermination or decision has been modified or reversed by a subsequent redetermination  
176 or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in  
177 accordance with such modifying or reversing redetermination or decision. If a decision of an appeal  
178 tribunal allowing benefits is affirmed in any amount by the Commission, benefits shall continue to be paid  
179 until such time as a court decision has become final so that no further appeal can be taken. If an appeal is  
180 taken from the Commission's decision, benefits paid shall result in a benefit charge to the account of the  
181 employer under § 60.2-530 only when, and as of the date on which, as the result of an appeal, the courts  
182 finally determine that the Commission should have awarded benefits to the claimant or claimants involved  
183 in such appeal.

184 **2. That the provisions of this act shall become effective on January 1, 2025.**

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